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Book Reviews

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January 1942 .....constitutional [1]
May, 1942 .....unconstitutional [2]
June, 1944 .....constitutional [3]
May, 1945.....unconstitutional,[4] and now this case, which has repudiated the constitutionality of the measure.

A good argument for the proponents of the amendment seems to be that the residents of the District of Columbia and of the territories should not be deprived of a "right" afforded to the citizens of the States. On the other hand, however, there is the fact that they likewise enjoy the immunity from suit in the federal courts.

Needless to say, prior to 1940, there was no cause for debate on this issue, and since it is significant that the amendment has been considered only by district courts, this is a new question which conceivably might be adjudged by the Supreme Court in its present session, and thus give the highest court of our land a chance to brand as unconstitutional a measure for the first time since 1936, when the court declared that Sections 301-2 of 11 U. S. C. A. (the Bankruptcy Act) were invalid.

Lawrence Turner, Jr.

BOOK REVIEWS

THERE IS NO MYSTERY ABOUT PATENTS. By William R. Ballard — J. M. Barrett, New York, 1946.—This little book (120 pages), although written for laymen, should be of interest to lawyers because of the arguments it presents on Mr. Ballard's side of an important legal and political question. The title is somewhat misleading in that it would seem to indicate a simple explanation of our patent system. Actually, the book is a collection of non-technical arguments for the retention of the patent system in its present form.

The author examines various criticisms of the present system of patents and answers arguments in support of these criticisms. An example is his response to the charge that the suppression of patents is a major evil. After pointing out that the term "suppressed patents" is a misnomer, Mr. Ballard says, "The simple facts about such suppression are: (a) it is not illegal; (b) it is not immoral; and (c) it is not done." When supported by his substantial arguments, this would seem to cover the point rather well.

The author also discusses such topics as: patent pools and cross licensing; public health, public safety and patents; compulsory licensing; the lawful use of patents; and the fundamental question of why we have patents at all. In his final chapter, "Whence the Sound and the Fury?" he advances a thesis suggested in earlier chapters — that most of the current criticism of our patent system is the work of collectivist groups who want to destroy the system as a step in the execution of their economic theories. In a short postscript the writer recognizes several minor shortcomings of the system and offers suggestions for their correction.

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1 Winkler v. Daniels, 43 F. Supp. 265 (1942).
2 McGarry v. City of Bethlehem, 45 F. Supp. 385 (1942).
3 Glaeser v. Acacia Mutual Life Association, 55 F. Supp. 925 (1944).
4 Behlert v. James Foundation of New York, 60 F. Supp. 706 (1945).

Although it was not written for the profession, this volume is adequately documented and presents additional material in the two appendixes. Of special interest is appendix B in which some of the testimony taken at hearings conducted on the McFarlane Bill in 1938 is presented. This was a bill proposing the compulsory licensing of patents.

For those desiring an introduction to the issues involved in arguments over our patent system this book is recommended.

John H. Merryman.

CASES ON JUDICIAL ADMINISTRATION. By Maynard E. Pirsig, University of Minnesota Law School. American Casebook Series. 1008 pages; West Publishing Company, St. Paul, Minnesota, 1946.—Since the present functioning of the courts is unsatisfactory to the people, and because the survival of democracy is so very much dependent on the efficient administration of justice, the value of a book of this type cannot be rated too highly. In order to improve judicial administration and to cope with new problems a knowledge of fundamentals is required. For these reasons the author has arranged the cases and materials "with the view to preserving the analytical and critical approach which the casebook system of instruction has taught students to adopt in their study of technical legal subjects."

The controversial nature of many of the topics, which has also necessitated this arrangement, are no better illustrated than in the first three chapters. These chapters, Justice as the Aim of the Legal Order, The Adversary Method, and The Doctrine of Precedent, deal respectively with the weighing of advantages and disadvantages of justice according to law, trial by combat and its shortcomings, and the place of administrative law and finally, *stare decisis* as opposed to necessary or whimsical decisions.

The importance of *stare decisis* in arriving at decisions would seem to be exaggerated if we note the numerous ways in which a previous decision may be followed by a court without abiding by *stare decisis*. In an article by Max Radin (Case Law and Stare Decisis, pp. 188-196) it is said that this doctrine is not followed if the court gives any reason whatever for arriving at its decision. The sole way to arrive at *stare decisis* is to hold in one way rather than another because, and only because, a court in the past has so held.

Although we cannot be sure that precedent is being followed unless the decision is *contre coeur*, the problem is just as confusing when the opinion of the court contains a series of essays. In the latter instance either one decision should be sufficient to bind the court or the series of cases cited and the essays delivered are merely a defense for some other reason for arriving at a decision. Opinions, then, do not always give the reason for the decision because those essays may be nothing more than a discussion of points of law.

The chief argument against the supposed infallibility of precedent concerns changing mores. Therefore, if judges have misinterpreted the mores of their day, or if those mores have changed, their successors should not be bound in helpless submission. This was the belief of Justice Cardozo. (The Nature of the Judicial Process, pp. 220-226).

That part of the book which deals with evidence and the jury trial goes to the roots of fair and efficient judicial administration. Here (Chap. 4) the question of the judge's power to comment on evidence is presented. On the one hand, it is asked why a judge should be compelled to remain silent when he detects a falsehood being foisted on the jury, or sees an honest witness given the

appearance of a liar; on the other hand, and with equal vehemence, it is argued that the persons who comprise the jury are as competent as the judge to weigh the evidence.

A discussion of the Sacco-Vanzetti Case, articles on cross-examination, exclusionary rules of evidence, reforms in jury trial, and the special jury, and a fine selection of cases illustrating the problems make this one of the most informative sections of this work.

The next, and final, four chapters deal with a different phase of judicial administration. The Organization of the Courts, The Judiciary, The Legal Profession, and Agencies and Methods of Reform treat of those instruments or devices which decide ultimately whether our theories of the dispensing of right will be carried out efficiently and impartially.

The confusion in recognizing the difference between political considerations in setting up county and state lines, and the advisability of disregarding these artificial barriers when the punishment of criminals is involved, is an example of the pitfalls justice and its administrators must encounter as a result of the Territorial Commission Theory of jurisdiction. It is unfortunate, too, when a statutory provision as to the distribution of judicial business is not directory merely, but mandatory. A suit which could be transferred to the proper court, either by the plaintiff's or the defendant's raising of the point, is now dismissed. Edson R. Sunderland says the mandatory distribution makes litigation one of the most hazardous of occupations.

The suggested reforms for improving the organization of the courts discussed, of course, would be of little value if judges were not qualified for their duties. It is for the latter reason that the "substantial interest rule" for the disqualification of judges has gradually been replaced, first, by the "real interest rule" and more recently, by the mere submission of an affidavit of prejudice. Furthermore, the selection of men for the bench solely for political reasons, as pointed out in Chapter Six, has created an impediment which has often prevented the effectual operation of the court system, no matter how carefully planned may be the improvements in the judicial machinery.

Therefore, because the calibre of the judge and of the officers of the court, the lawyers, is of such importance, the need for a proper teaching of legal ethics becomes apparent. The closing chapters have as their subject "The Legal Profession," and "Rules Making Power of Courts." Although the author has not intended that these materials be used for introductory courses given to students entering law school, some of the articles can be read and studied with profit by the neophyte law student. "Justice According to Law" and parts of the chapter on the legal profession, in particular, would be understandable to anyone acquainted with the rudiments of political science. Although, the remaining materials do demand a knowledge of legal principles, they would be of value if used in conjunction with the corresponding studies.

Charles T. Dunn.